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October 28, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 2, 2009

Case Number: TSO-0762

This Decision concerns the eligibility of XXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹ For the reasons set forth below, I conclude that the individual should be granted a security clearance. ²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, who requested a security clearance on the individual's behalf in connection with that employment. During the ensuing investigation, the local security office (LSO) obtained information that raised security concerns, and summoned her for an interview with a personnel security specialist in January 2009. After this Personnel Security Interview (PSI), the LSO referred the individual to a local psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report, setting forth the results of that evaluation, and sent it to the LSO. Based on this report and the rest of the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. The LSO informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning her eligibility for access authorization.

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced 10 exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist. The individual introduced 10 exhibits and presented the testimony of six witnesses, in addition to testifying herself.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

A. The Individual's Alcohol Usage and Related Incidents

The following information was obtained from the DOE psychiatrist's report and is generally not disputed by the individual. The individual began drinking alcohol at 15 years of age, in 2000, when she would consume approximately three beers per month. In 2002, her alcohol intake increased to an average of three-to-four beers weekly, and she drank to intoxication approximately twice per month. She would have to consume five or more beers to become intoxicated. The individual's alcohol intake peaked in 2004 and 2005, when she would consume four "shots" of vodka and two beers two-to-three times per week.

In 2004, the individual was cited for littering when a law enforcement officer saw her submerge a can of beer in a lake to hide the fact that she was consuming alcohol while underage. She would also "blackout" repeatedly during this time, which she attributed to drinking alcohol, against medical advice, while taking a prescription anti-depressant.

In February 2005, the individual was depressed over her boyfriend leaving her for another woman. One evening, she drank an unspecified amount of alcohol at a concert, and then went home and consumed four beers and an estimated total of 10-15 pills, consisting of codeine, acetaminophen, an over-the-counter antihistamine and a prescription tranquilizer. She then called for an ambulance and later insisted that she was not attempting to commit suicide, but merely wanted to get her ex-boyfriend's attention. She was admitted to a local hospital, and was then transferred to a local mental health facility, where she remained for five days. During her stay at the mental health facility, she was diagnosed as suffering from Alcohol Dependence and Major Depressive Disorder, Recurrent, Severe, Without Psychotic Symptoms. After her discharge, the individual continued to see a psychiatrist for medication management and a therapist (hereinafter referred to as "the individual's therapist") for counseling. She also began attending AA meetings.

After two-to-three months, the individual ceased her participation in AA and resumed drinking. From approximately August 2005 until February 2007, she would consume two beers or glasses of wine two times during the week, and a six-pack of beer usually twice on the weekends. She would become intoxicated approximately twice each week. After meeting her fiancé in 2007, she reduced her alcohol intake. After her ex-boyfriend died in an alcohol-related boating accident several months later, she reduced her alcohol intake yet again. As of the date of the DOE psychiatrist's report, she reported consuming an average of three glasses of wine per week.

B. The Notification Letter

Much of the derogatory information set forth in the preceding section is cited in the Notification Letter, as it creates a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (h) and (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under criterion (h), information is derogatory if it indicates that an individual has an illness or mental condition which, in the opinion of a psychiatrist causes, or may cause, a significant defect in the individual's judgement or reliability. 10 C.F.R. § 710.8(h). Criterion (j) defines as derogatory information indicating that the individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependant or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). As support for these criteria, the Letter cites the diagnosis of the DOE psychiatrist that the individual suffers from Alcohol Abuse, and the DOE psychiatrist's conclusion that this condition causes, or may cause, a significant defect in her judgement or reliability.³ The letter also cites the individual's stay in the mental health facility, her consumption of alcohol, against medical advice, while taking a prescription anti-depressant, her repeated "blackouts," her littering citation, and the expressed concerns of her parents and grandparents regarding her alcohol consumption.

C. The DOE's Security Concerns

This derogatory information adequately justifies the DOE's invocation of criteria (h) and (j), and raises significant security concerns. Excessive alcohol consumption such as that exhibited by the individual often leads to the exercise of questionable judgement or the failure to control impulses, and can therefore raise questions about an individual's reliability and trustworthiness. Accordingly, Alcohol Abuse is a mental condition that can impair judgement, reliability, or trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Adjudicative Guidelines), The White House (December 19, 2005), Guidelines G and I.*

III. REGULATORY STANDARDS

³ In his report, the DOE psychiatrist cited Alcohol Abuse as the only illness or mental condition that was causing, or could cause, a significant defect in the individual's judgement or reliability. He disagreed with the diagnosis of the local mental health facility that the individual suffers from Major Depressive Disorder, Recurrent, stating that, "at most, the diagnosis might be Major Depressive Disorder, Single Episode, or Bereavement." DOE Psychiatrist's Report, DOE Exhibit (DOE Ex.) 6 at 5. By diagnosing the individual as suffering from Alcohol Abuse, the DOE psychiatrist also demonstrated his disagreement with the mental health facility's diagnosis of Alcohol Dependence, since one of the requirements for an Alcohol Abuse diagnosis under the Diagnostic and Statistical Manual of Mental Health Disorders, Fourth Edition (Text Revision) (DSM-IV-TR) is that the symptoms must never have met the criteria for Alcohol Dependence. DSM-IV-TR, §305(B).

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgement . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013 (1995), (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

The record clearly indicates, and the individual does not deny, that she has, in the past, exercised poor judgement regarding her usage of alcohol. Her under-aged and excessive drinking, her 2005 overdose and her consumption of alcohol against medical advice are all evidence of faulty decision-making concerning, or while under the influence of, alcohol. However, several factors lead me to believe that the individual has permanently altered her pattern of alcohol consumption, and that the previous defects in her judgement and reliability caused by alcohol will not recur.

First, the bulk of the individual’s irresponsible drinking and poor alcohol-related decision-making occurred before, or shortly after, her twenty-first birthday. Teenagers often act irresponsibly, with questionable impulse control and an incomplete understanding of the consequences of their actions. This can lead to excessive alcohol consumption. However, as they mature and assume the responsibilities of full-time employment, marriage and parenthood, levels of alcohol consumption often decline. *See* Individual’s Exhibit (Ind. Ex.) 4, Patrick M. O’Malley, National Institute on Alcohol Abuse and Alcoholism, *Maturing Out of Problematic Alcohol Use*, <http://pubs.niaaa.nih.gov/publications/arh284/202-204.htm>. In this case, much of the individual’s excessive drinking occurred while she was in high school and college, and in the presence of others who drank to excess. Hearing Transcript (Tr.) at 43. However, the individual, who is now 24 years old, no longer associates with those excessive drinkers, no longer frequents bars, has a career, and owns a home. Tr. at 106-107, 152, 155. Furthermore, the individual testified that she is engaged to be married, and that she and her fiancé plan on having children. Tr. at 155. The individual’s father and aunt testified that she is now a more mature person whose alcohol use has significantly declined,

Tr. at 30, 67-68, and her parents and grandparents all indicated that they are no longer concerned about her alcohol consumption. Tr. at 30, 87-88, 48, 56.

Second, the record in this matter indicates that the individual suffered from Alcohol Abuse, and not Alcohol Dependence, as was diagnosed by the local mental health facility in 2005. Ind. Ex. 9, Discharge Summary. The DOE psychiatrist's later diagnosis of Alcohol Abuse is inconsistent with any diagnosis of Alcohol Dependence, and the individual's therapist agreed that the individual never satisfied the criteria for Alcohol Dependence. Ind. Ex. 3. The significance of this distinction is reflected in Guideline H, paragraph 23(b) of the *Adjudicative Guidelines*. Pursuant to that paragraph, an alcohol abuser can mitigate security concerns relating to alcohol consumption by "acknowledg[ing] his or her . . . issues of alcohol abuse, provid[ing] evidence of actions taken to overcome this problem, and . . . establish[ing] a pattern of . . . responsible use." In contrast, someone who is alcohol dependent must establish a pattern of total abstinence, in addition to acknowledging the problem and taking steps to address it.

Finally, and most importantly, the individual has satisfied the criteria for mitigation under paragraph 23(b). The individual acknowledged at the hearing that her past usage warranted a diagnosis of Alcohol Abuse. Tr. at 120-121. She has addressed her alcohol usage issues in counseling sessions with her therapist, Ind. Ex. 3, and has established a sustained pattern of responsible alcohol use. Her statements that she has consumed an average of three glasses of wine per week since May 2007, and was last intoxicated on New Years Eve, 2007 (DOE Ex. 6 at 4; DOE Ex. 9 at 35; Tr. at 117) were corroborated by the testimony of her parents, her grandfather, and her aunt. Tr. at 30, 46, 57, 64, 85-86. ⁴ This establishes a 20-month period of responsible use, as of the date of the hearing. The individual further testified that she intends to continue using alcohol responsibly, and to refrain from drinking to intoxication. Tr. at 166. The DOE psychiatrist testified that he was "convinced that [the individual is] using alcohol responsibly." Tr. at 168. Although he testified that the individual was at a higher risk of experiencing future alcohol-related problems because of her Alcohol Abuse diagnosis, and that the best course of action was to completely refrain from drinking, the DOE psychiatrist concluded that the individual's chances of relapsing were "lowish," and that she may be demonstrating adequate evidence of reformation. Tr. at 170, 174, 176, 179. It is my common sense

⁴ This would seem to contradict certain statements in the DOE psychiatrist's February 2009 report. Specifically, the DOE psychiatrist said that the individual reported having last consumed alcohol to the point of intoxication two days prior to her evaluation, when she drank two cans of beer over a two-hour period, and reported drinking to intoxication once per month after similar levels of consumption. DOE Ex. 6 at 6. The individual claims that the DOE psychiatrist misinterpreted her definition of intoxication, which she says is congruent with her state's legal definition of intoxication, a blood alcohol content of 0.08. DOE Ex. 4, Individual's Response to the Notification Letter. Normally, I would view such a claim with suspicion, given the individual's substantial interest in obtaining a security clearance. However, I cannot ignore the fact that the claimed level of consumption would seem to be insufficient to cause intoxication in an adult female of normal dimensions, as the individual is. Given the totality of the circumstances, including the testimony of the individual's witnesses, I found credible the individual's testimony that she last drank to intoxication on New Year's Eve, 2007.

judgement, after considering the record in light of the *Adjudicative Guidelines*, that the individual has mitigated the security concerns associated with the issues before me.

V. CONCLUSION

For the reasons set forth above, I conclude that the individual has successfully addressed the DOE's security concerns under criteria (h) and (j). I further conclude that she has demonstrated that granting her access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the individual should be granted a security clearance. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Senior Hearing Officer
Office of Hearings and Appeals

Date: October 28, 2009